



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/171291

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed January 07, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on February 09, 2016, at Elkhorn, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's prior authorization request for speech language therapy.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED], MA CCC SLP

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Walworth County. The petitioner is a three years old.

2. On October 8, 2015 the petitioner's provider submitted a prior authorization request for speech language therapy. The request was to evaluate swallow function followed by 12 oral function therapy visits. This PA was returned.
3. The provider resubmitted the PA on October 23, 2015 requesting to evaluate swallowing function and for 12 oral function therapy visits. This PA was also returned.
4. The provider resubmitted the PA on December 2, 2015 requesting to evaluate swallowing function and for 12 oral function therapy visits.
5. On December 18, 2015 the Department sent the petitioner a notice stating that they denied the petitioner's prior authorization request.
6. On December 30, 2015 the petitioner's doctor wrote a letter stating that the petitioner has been under her care since birth. She went on to state that he is developmentally delayed with a significant speech delay. In addition, he is a severely picky eater, which has hindered his growth. Speech therapy is addressing his eating. She concludes that he has shown some progress, and that discontinuing the medically necessary speech therapy would be detrimental.
7. On January 11, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
8. The petitioner is a three year old boy. He is developmentally delayed. He has significant speech delay. He is also underweight and has issues with eating.

### **DISCUSSION**

Speech therapy is covered by MA under Wis. Admin. Code, §DHS 107.18. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.18(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

In reviewing a PA request the Department must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability; ...
3. Is appropriate with regard to generally accepted standards of medical practice; ...
6. Is not duplicative with respect to other services being provided to the recipient; ...
8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The provider also requested Code 92526, Treatment of Swallowing Dysfunction and/or Oral Motor Function for Feeding. The Department's Therapy Handbook, Appendix 10, requires the following for approval:

The recipient must have an identified physiological swallowing and/or feeding problem. This is to be documented using professional standards of practice such as identifying oral phase, esophageal phase or pharyngeal phase dysphagia, baseline of current swallowing and feeding skills not limited to signs of aspiration, an oral mechanism exam, report of how nutrition is met, current diet restrictions, compensation strategies used, and level of assistance needed.

In this case the Department denied this prior authorization request because the petitioner did not have an identified physiological swallowing and/or feeding problem, and that the services requested were not medically necessary. The petitioner is very, very small for his age. His mother highlights that he was not even on the charts until speech therapy. He was then at a very low percentile, but he had made progress. Since the speech therapy stopped, the petitioner has lost ½ of a pound, and is probably off the charts again. The petitioner's mother and his doctor state that speech therapy was helping the petitioner to eat more, and that the requested services are medically necessary. The mother states that for whatever reason the petitioner does not want to or like to eat. She is not sure what is causing this.

The problem is that the petitioner does not have a physiological swallowing or feeding problem. The evaluations performed show that the petitioner does not have a disruption in any of the four phases of swallowing. He eats a variety of food textures. He is an extremely picky eater resulting in selective eating habits and low volume of food intake. This has caused poor weight gain. Unfortunately, selective eating or being an extremely picky eater is not a covered reason for speech therapy services under the MA program. I further note that according to the medical records the petitioner's mother does not make the petitioner his own separate meals. Rather, she makes sure that the petitioner will at least eat one item that she is preparing for dinner, i.e. a piece of bread.

Speech therapy is not covered for picky eaters even when children have lost weight. I encourage the petitioner's mother to follow up with the other specialties as she stated that she is doing. If there is a diagnosis or documented physiological swallowing or feeding problem in the future, then it is possible that speech therapy would be covered in the future.

### **CONCLUSIONS OF LAW**

The Department correctly denied the petitioner's prior authorization request for speech language therapy.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

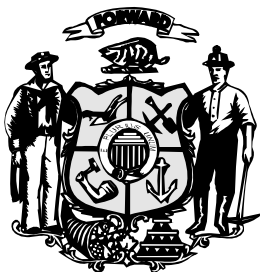
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of March, 2016

---

\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 22, 2016.

Division of Health Care Access and Accountability